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IN THE SUPREME COURT OF THE STATE OF UTAH

UNIVERSITY OF UTAH, a body	:	
corporate and politic under Utah law,	:	
and J. BERNARD MACHEN, President	:	DOCKETING STATEMENT
of the University of Utah,	:	
	:	
Plaintiffs/Appellees,	:	
	:	
v.	:	
	:	Case No. 20030877-SC
MARK L. SHURTLEFF,	:	
Utah Attorney General,	:	District Ct. No. 030910595
	:	
Defendant/Appellant.	:	

1. **Nature of the proceeding.** This appeal is from a final judgment of the Third District Court.

2. **Jurisdiction.** This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-3-(3)(j) (2002).

3. **Relevant dates.** a. The final judgment appealed from was entered on September 19, 2003.

b. The notice of appeal was filed on October 16, 2003.

c. No post-judgment motions were filed.

4. **Inmate mailbox rule.** The appellant is not an inmate confined in an institution invoking Rule 4(f).

5. **Rule 54(b)** This appeal is not from an order in a multiple-party or a multiple-claim case in which the judgment has been certified as a final judgment by the trial court pursuant to Rule 54(b), Utah Rules of Civil Procedure.

6. **Criminal cases.** Not applicable.

7. **Issues on appeal.**

a. The University of Utah, an agency of the State of Utah, and its president are prohibited from establishing rules or policies pertaining to firearms that are contrary to the laws enacted by the Utah State Legislature.

Determinative law: State v. Burns, 2000 UT 56, ¶25, 4 P.3d 795; Utah Sch. Bd. Assoc. v. Utah State Bd. of Educ., 2001 UT 2, ¶11, 17 P.3d 1125; Utah Code Ann. § 78-27-64(1) (2002); Utah Code Ann. § 76-10-500 (1999); Utah Code Ann. § 53B-3-103 (Supp. 2002); Utah Code Ann. §76-10-530 (Supp. 2003).

Standard of review: The district court's denial of the defendant's motion to dismiss is reviewed for correctness, granting no deference to the district court's ruling. First Equity Fed., Inc. v. Phillips Dev., L.C., 2002 UT 56, ¶11, 52 P.3d 1137; Pendleton v. Utah State Bar, 2000 UT 96, ¶5, 16 P.3d 1230.

b. The University of Utah has no power or autonomy granted by the Constitution of the State of Utah that would permit it to disregard and nullify the general laws enacted by the State of Utah, even when such laws relate to the purposes and government of the University.

Determinative law: Utah Const. art. X, § 4 (1896); 1892 Utah Laws 8-11; Revised Statutes of Utah § 2291 (1898); Revised Statutes of Utah § 2295 (1898); Utah Const. art. X, § 4 (1986); State v. Candland, 36 Utah 406, 104 P. 285, 293 (1909); Spence v. Utah State Agric. Coll., 119 Utah 104, 225 P.2d 18 (1950); Univ. of Utah v. Bd. of Exam'rs of State, 4 Utah 2d 408, 295 P.2d 348 (1956); First Equity Corp. of Florida v. Utah State Univ., 544 P.2d 887 (Utah 1975); Petty v. Utah State Bd. of Regents, 595 P.2d 1299, 1300-1 (Utah 1979); Pharm. and Diagnostic Serv., Inc. v. Univ. of Utah, 801 F.Supp. 508, 512 (D. Utah 1990); Watson v. Univ. of Utah Med. Ctr., 75 F.3d 569, 575 (10th Cir. 1996).

Standard of review: The district court's denial of the defendant's motion to dismiss is reviewed for correctness, granting no deference to the district court's ruling. First Equity Fed., Inc. v. Phillips Dev., L.C., 2002 UT 56, ¶11, 52 P.3d 1137; Pendleton v. Utah State Bar, 2000 UT 96, ¶5, 16 P.3d 1230.

8. Factual summary.

On October 26, 2001, the President of Utah's Senate and the Speaker of its House of Representatives requested a formal opinion from Attorney General Shurtleff as to the

validity under Utah law of Utah's Department of Human Resource Management's (DHRM) Rule 477-9-1(5) (prohibiting state employees from carrying firearms "in any facility owned or operated by the state, or in any state vehicle, or at any time or any place while on state business."). On November 30, 2001, Attorney General Shurtleff responded by issuing Utah Attorney General's Opinion No. 01-002. Attorney General Shurtleff's opinion found the questioned DHRM rule to be unenforceable.

In a footnote to his opinion, Attorney General Shurtleff stated:

The administrative rule that is the subject of your inquiry, R. 477-9-1(5) may not be the only rule that has been promulgated without authorization from the Legislature. For instance, your letter requesting this opinion had as an attachment, Formal Opinion No. 98-01 from the Office of Legislative Research and General Counsel. That opinion concludes that the University of Utah's policy prohibiting students and faculty from possessing firearms on University premises was contrary to law. [As of this date, those policies are still listed in the University of Utah Policy and Procedures Manual: Policy 8-10, Rev. 3, July 14, 1997 and Policy 2-9, Rev. 7, July 13, 1998 Section IV Subsection F.] I agree with the reasoning and conclusions of the Legislative General Counsel that those policies are unlawful and in violation of the laws of this State.

Utah Attorney General's Opinion No. 01-002 at 4 n.13.

Plaintiffs alleged in their complaint that "[s]tudents and members of the University's staff have threatened to bring firearms to campus" and that "certain members of the Utah Legislature proposed legislation which would permit the Legislature's Executive Appropriations Committee to reduce a state agency's administrative budget by up to 50 percent based on a determination that the agency policies violate a state statute. The purpose of this proposal, which was narrowly defeated in the Utah House of

Representatives, was to punish the University for enforcing the Internal University Firearms Policy in the face of the Attorney General's opinion."

Plaintiffs also allege that the Utah State Legislature enacted Senate Bill 170, reauthorizing administrative rules, which expressly stated that it was not reauthorizing the University of Utah's internal university firearms policy. Plaintiffs further allege that some students have expressed "their desire to carry firearms on campus" and some law students have formed an organization ("College of Law Gun Rights Advocates") and contend that the plaintiffs' policies are illegal. One student wrote a letter to a newspaper calling the plaintiffs' policies illegal and "urging students who owned concealed weapons to carry them." Some employees of the University are alleged to have threatened to bring firearms onto the University campus contending that the plaintiffs' policies are illegal and unenforceable.

9. **Assignment.** This appeal is subject to transfer by the Supreme Court to the Court of Appeals pursuant to Utah Code Ann. § 78-2-2(4) (2002). The appellant opposes such a transfer on the ground that the first issue (scope of Utah's firearms statutes) is an issue of first impression that only this Court can answer definitively.

10. **Related appeals.** There are no related appeals.

11. **Attachments.** The following are attached:

- a. The final judgment from which the appeal is taken.
- b. The defendant's notice of appeal.

DATED this _____ day of November, 2003.

MARK L. SHURTLEFF
Attorney General

BRENT A. BURNETT
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Attorneys for Defendant/Appellant Shurtleff

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of November, 2003, a true, correct and complete copy of the foregoing was delivered to the following attorneys as indicated below:

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